



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1996

Mr. David A. Anderson
Chief Legal Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR96-0298

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38599.

The Texas Education Agency (the "agency") received an open records request for a copy of "the preliminary audit report [of the Region 19 Education Service Center] and any correspondence between the center and the agency related to the audit report." You contend that because section 552.022(1) of the Government Code deems as public information "a *completed* report" (emphasis added), the "preliminary" audit is not subject to the Open Records Act.

Section 552.022 of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information:

(1) a *completed* report, audit, evaluation, or investigation made of, for, or by a governmental body. [Emphasis added.]

Although section 552.022(1) provides that completed reports made of, for, or by a governmental body are public information, this section does not imply that "incomplete" reports are automatically excepted from required disclosure. Open Records Decision No. 460 (1987) (construing predecessor statute). The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure under subchapter C of the act. *Id.* Consequently, the mere fact

the audit is in a "preliminary" stage does not except the audit from required public disclosure. Accordingly, the agency may not withhold the preliminary audit on these grounds.

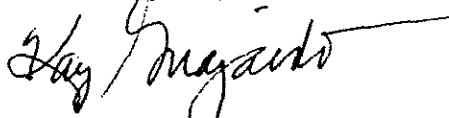
You also ask for clarification of a prior ruling of this office, Open Records Letter 95-1129 (1995), wherein this office concluded that a similar "preliminary audit" was not deemed confidential under section 39.076(b) of the Education Code, which provides:

After completing an investigation, the agency shall present *preliminary findings* to any person the agency finds has violated a law, rule, or policy. Before issuing *a report with its final findings*, the agency must provide a person the agency finds has violated a law, rule, or policy an opportunity for an informal review by the commissioner or a designated hearing examiner. [Emphasis added.]

Section 39.076(b) contemplates two distinct sets of records: the "preliminary findings" and a report of "final findings." Section 39.076(b) contains no language that makes either set of records confidential; it merely provides that before a report of final findings is released to the public, the person who has allegedly violated a law, rule, or policy must be granted an opportunity to respond to the preliminary findings. In this regard, section 39.076(b) "merely provides certain procedural prerequisites that must be met before the TEA may disseminate the [final] 'report' of its findings to the public." Open Records Letter OR95-1129 (1995). Consequently, the preliminary audit and related documents that are the subject of the current open records request are not confidential under section 39.076(b). We therefore conclude that these records must be released at this time in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/ch

Ref.: ID# 38599

Enclosures: Submitted documents

cc: Mr. Robert L. Ramey
10221 Ridgewood
El Paso, Texas 79925
(w/o enclosures)